

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 54

HOUSE BILL 2359

AN ACT

AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 23;
RELATING TO TRANSPORTATION SERVICES CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 9, Arizona Revised Statutes, is amended
3 by adding article 23, to read:

4 ARTICLE 23. TRANSPORTATION SERVICE CONTRACTS

5 44-1379. Indemnity agreements in motor carrier transportation
6 contracts void; definitions

7 A. A MOTOR CARRIER AND A PROMISEE MAY NOT AGREE TO EITHER OF THE
8 FOLLOWING AS IT RELATES TO A TRANSPORTATION SERVICES CONTRACT ENTERED INTO ON
9 OR AFTER THE EFFECTIVE DATE OF THIS SECTION:

10 1. THAT THE MOTOR CARRIER WILL INDEMNIFY, DEFEND OR HOLD THE PROMISEE
11 HARMLESS, OR AGREE TO A PROVISION THAT HAS THE EFFECT OF INDEMNIFYING,
12 DEFENDING OR HOLDING A PROMISEE HARMLESS, FROM CLAIMS OR LIABILITY FOR THE
13 NEGLIGENCE, INTENTIONAL ACTS OR INTENTIONAL OMISSIONS OF THE PROMISEE.

14 2. THAT THE PROMISEE WILL INDEMNIFY, DEFEND OR HOLD THE MOTOR CARRIER
15 HARMLESS, OR AGREE TO A PROVISION THAT HAS THE EFFECT OF INDEMNIFYING,
16 DEFENDING OR HOLDING A MOTOR CARRIER HARMLESS, FROM CLAIMS OR LIABILITY FOR
17 THE NEGLIGENCE, INTENTIONAL ACTS OR INTENTIONAL OMISSIONS OF THE MOTOR
18 CARRIER.

19 B. AN AGREEMENT THAT VIOLATES THIS SECTION IS AGAINST PUBLIC POLICY
20 AND IS VOID AND UNENFORCEABLE.

21 C. THIS SECTION DOES NOT APPLY TO A CONTRACT, SUBCONTRACT OR AGREEMENT
22 THAT CONCERNS OR AFFECTS RAILROAD OPERATIONS, RAILROAD PROPERTY OR RAILROAD
23 FACILITIES OR TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS
24 AGREEMENT ADMINISTERED BY THE INTERMODAL ASSOCIATION OF NORTH AMERICA OR TO
25 ANOTHER AGREEMENT THAT PROVIDES FOR THE INTERCHANGE, USE OR POSSESSION OF
26 INTERMODAL CHASSIS, INTERMODAL CONTAINERS OR OTHER INTERMODAL EQUIPMENT.

27 D. THIS SECTION DOES NOT APPLY TO AGREEMENTS TO WHICH THIS STATE, A
28 POLITICAL SUBDIVISION OF THIS STATE OR AN AGENT OF A POLITICAL SUBDIVISION OF
29 THIS STATE IS A PARTY, INCLUDING INTERGOVERNMENTAL AGREEMENTS, OR TO
30 AGREEMENTS TO WHICH A PUBLIC SERVICE CORPORATION, AS DEFINED IN ARTICLE XV,
31 SECTION 2, CONSTITUTION OF ARIZONA, INCLUDING AN ELECTRIC OR GAS UTILITY OR
32 AN AFFILIATE OF A PUBLIC SERVICE CORPORATION, IS A PARTY.

33 E. FOR THE PURPOSES OF THIS SECTION:

34 1. "MOTOR CARRIER" MEANS A PERSON WHO IS ENGAGED IN THE TRANSPORTATION
35 OF PROPERTY FOR COMPENSATION BY A MOTOR VEHICLE AND INCLUDES AN AGENT,
36 EMPLOYEE, SERVANT OR INDEPENDENT CONTRACTOR OF THE MOTOR CARRIER IF THE
37 AGENT, EMPLOYEE, SERVANT OR INDEPENDENT CONTRACTOR PROVIDES SERVICES IN
38 CONNECTION WITH A TRANSPORTATION SERVICES CONTRACT THAT IS SUBJECT TO THIS
39 SECTION.

40 2. "MOTOR VEHICLE" MEANS A MOTOR VEHICLE OR VEHICLE COMBINATION THAT
41 HAS A GROSS WEIGHT VEHICLE RATING OR COMBINED GROSS WEIGHT RATING THAT IS
42 GREATER THAN TEN THOUSAND POUNDS.

1 3. "PROMISEE" INCLUDES AN AGENT, EMPLOYEE, SERVANT OR INDEPENDENT
2 CONTRACTOR WHO IS DIRECTLY RESPONSIBLE TO THE PROMISEE OR WHO PROVIDES
3 SERVICES IN CONNECTION WITH A TRANSPORTATION SERVICES CONTRACT THAT IS
4 SUBJECT TO THIS SECTION, OTHER THAN A MOTOR CARRIER THAT IS A PARTY TO A
5 TRANSPORTATION SERVICES CONTRACT WITH THE PROMISEE AND AN AGENT, EMPLOYEE,
6 SERVANT OR INDEPENDENT CONTRACTOR DIRECTLY RESPONSIBLE TO THE MOTOR CARRIER.
7 4. "TRANSPORTATION SERVICES" MEANS ANY OF THE FOLLOWING:
8 (a) THE TRANSPORTATION OF PROPERTY.
9 (b) THE ENTRY ON PROPERTY TO LOAD, UNLOAD OR TRANSPORT PROPERTY.
10 (c) THE PROVISION OF A SERVICE THAT IS INCIDENTAL TO THE ACTIONS
11 PRESCRIBED BY SUBDIVISION (a) OR (b), INCLUDING THE PACKING OR STORAGE OF
12 PROPERTY.

APPROVED BY THE GOVERNOR APRIL 12, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2011.

Passed the House March 10, 20 11

Passed the Senate April 5, 20 11

by the following vote: 52 Ayes,

by the following vote: 23 Ayes,

8 Nays, 0 Not Voting

5 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

Charmine Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

6 day of April, 20 11

at 10:30 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 12th day of

April

at 10:25 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12th day of April, 20 11

at 4:01 o'clock P. M.

[Signature]
Secretary of State

H.B. 2359